

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**THE SAVAGE FAMILY TRUST and
NATIONAL UNION FIRE INSURANCE
COMPANY of PITTSBURGH, PA,
as subrogee of THE SAVAGE FAMILY TRUST**
Plaintiffs,

Civil Action No.: 12-cv-11518

v.

**HYANNIS YACHT CLUB
Defendant.**

PLAINTIFFS' COMPLAINT

NOW COME the Plaintiffs, The Savage Family Trust and National Union Fire Insurance Company of Pittsburgh, PA, by and through their undersigned attorneys, Holbrook & Murphy, and assert this Complaint against the Defendant, Hyannis Yacht Club, as follows:

1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears, and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.
2. At all times material hereto, the Plaintiff, The Savage Family Trust, was the owner of a 2001, 62' Oyster Marine sailing vessel, S/V VENTURE.
3. At all times material hereto, Peter P. Savage and Katherine M. Savage were trustees of The Savage Family Trust.
4. At all times material hereto, Peter and Katherine Savage, were the operators of a 2001, 62' Oyster Marine sailing vessel, S/V VENTURE.
5. At all times material hereto, Defendant, Hyannis Yacht Club, was and is a nonprofit corporation organized under and by virtue of the laws of the Commonwealth of

Massachusetts with its principal place of business located at 490 Ocean Street, Hyannis, Massachusetts, 02601.

6. At all times material hereto, The Savage Family Trust and the S/V VENTURE were insured by National Union Fire Insurance Company of Pittsburgh, PA, a foreign corporation, for various marine risks.

7. At all times material hereto, Defendant, Hyannis Yacht Club, provided a marina and mooring field located at Lewis Bay in the County of Barnstable, Commonwealth of Massachusetts, for its members, as well as for use by guests who were members of any other bona fide yacht club.

8. At all times material hereto, the Defendant, Hyannis Yacht Club, operated, maintained and controlled the marina and mooring field.

9. On or about August 12, 2010, Peter Savage contacted the Steward's Office of the Hyannis Yacht Club and inquired about visiting Hyannis Yacht Club and mooring the S/V VENTURE in the Hyannis Yacht Club mooring field.

10. On or about August 12, 2010, and on subsequent dates, Peter Savage informed Hyannis Yacht Club staff of the dimensions, draft, and requirements of the S/V VENTURE.

11. On or about August 20, 2010, Peter and Katherine Savage arrived at Lewis Bay aboard the S/V VENTURE.

12. On or about August 20, 2010, in accordance with Hyannis Yacht Club guidelines, Peter Savage contacted Hyannis Yacht Club to notify the Club of the S/V VENTURE's arrival and was directed by VHF radio to rendezvous with the Hyannis Yacht Club launch vessel.

13. On or about August 20, 2010, the S/V VENTURE rendezvoused with the Hyannis Yacht Club launch and followed the launch to a mooring assigned by the Hyannis Yacht Club staff.

14. On or about August 20, 2010, the S/V VENTURE was secured to the assigned mooring by Peter Savage with the assistance of Hyannis Yacht Club staff.

15. The Hyannis Yacht Club staff assured Peter Savage and/or Katherine Savage that the mooring was under its care, custody, and/or control and it would be proper and adequate for the S/V VENTURE.

COUNT I
(Negligence against Hyannis Yacht Club)

16. The Plaintiffs reiterate all of the allegations set forth in Paragraphs One (1) through Fifteen (15), inclusive, and incorporate same as if fully set out herein.

17. On or about August 22, 2010, the mooring and its related tackle assigned by Hyannis Yacht Club, failed to keep the S/V VENTURE in its intended location, causing the S/V VENTURE to strike a moored barge.

18. As a further result, the S/V VENTURE sustained extensive damage and diminished value.

19. As a further result, the Plaintiffs incurred costs for salvage, repair, and storage of the vessel, and were otherwise harmed.

20. As a further result, National Union Fire Insurance Company of Pittsburgh, PA paid various sums and incurred expenses, to The Savage Family Trust for these damages, pursuant to the insurance policy it had issued.

21. The damage to S/V VENTURE was caused by the negligence of the Defendant, Hyannis Yacht Club, in its failure to exercise reasonable diligence to provide a safe mooring and to warn a person lawfully using its facilities of any unexpected hazard or deficiency of which it may have knowledge, or should have knowledge in the ordinary course of diligence, all of which

caused the S/V VENTURE to sustain damages, without any negligence on the part of Peter or Katherine Savage contributing thereto.

22. The failure of the mooring in question was the direct and proximate result of the negligence of the Defendant, Hyannis Yacht Club, in failing to properly assign a suitable mooring.

23. The failure of the mooring in question was the direct and proximate result of the negligence of the Defendant, Hyannis Yacht Club, in failing to properly install, use adequate weight or design, and/or maintain the aforesaid mooring.

24. As a result of the negligence of the Defendant, Hyannis Yacht Club, the Plaintiffs have been damaged in the sum of \$110,000, plus interest, costs and such other relief as this Court deems fit.

COUNT II
(Breach of Contract against Hyannis Yacht Club)

25. The Plaintiffs reiterate all of the allegations set forth in Paragraphs One (1) through Twenty Four (24), inclusive, and incorporate same as if fully set out herein.

26. On or about August 12, 2010, Peter Savage and Hyannis Yacht Club, entered into an agreement whereby Hyannis Yacht Club agreed to provide a mooring suitable and adequate for the S/V VENTURE.

27. Peter Savage performed all of the conditions, covenants and promises required by him to be performed in accordance with the terms and conditions of the contract, by communicating the size of the S/V VENTURE to the Hyannis Yacht Club, properly securing the S/V VENTURE to the mooring assigned by Hyannis Yacht Club, paying the fee required by Hyannis Yacht Club, and properly registering with the Steward's Office at Hyannis Yacht Club.

28. Hyannis Yacht Club breached its agreement with Peter Savage by failing to provide a suitable and adequate mooring for the S/V VENTURE.

29. As a result of Hyannis Yacht Club breaching its agreement, on or about August 22, 2010, the S/V VENTURE dragged and/or broke free from her assigned mooring and struck a moored barge.

30. As a further result of Hyannis Yacht Club breaching its agreement, the S/V VENTURE sustained extensive damage and diminished value.

31. As a further result of Hyannis Yacht Club breaching its agreement, the Plaintiffs incurred costs for salvage, repair, and storage of the vessel, and were otherwise harmed.

32. As a further result, National Union Fire Insurance Company of Pittsburgh, PA paid various sums and incurred expenses, to The Savage Family Trust for these damages, pursuant to the insurance policy it had issued.

33. As a result of the breach of contract by the Defendant, Hyannis Yacht Club, the Plaintiffs have been damaged in the sum of \$110,000, plus interest, costs and such other relief as this Court deems fit.

COUNT III
(Breach of Implied Warranty of Workmanlike Performance by Hyannis Yacht Club)

34. The Plaintiffs reiterate all of the allegations set forth in Paragraphs One (1) through Thirty Three (33), inclusive, and incorporate same as if fully set out herein.

35. In entering into an agreement to provide a mooring for the S/V VENTURE, Hyannis Yacht Club warranted that it would provide suitable and adequate mooring in a workmanlike fashion.

36. Peter Savage performed all of the conditions, covenants and promises required by him to be performed in accordance with the terms and conditions of the agreement, by

communicating the size of the S/V VENTURE to the Hyannis Yacht Club, properly securing the S/V VENTURE to the mooring assigned by Hyannis Yacht Club, paying the fee required by Hyannis Yacht Club, and properly registering with the Steward's Office at Hyannis Yacht Club.

37. In providing a mooring for the S/V VENTURE, Hyannis Yacht Club failed to do so in a workmanlike manner because the mooring site was unsuitable and inadequate for the S/V VENTURE and other failures as will be shown at trial.

38. As a result of Hyannis Yacht Club's failure to provide a mooring in a workmanlike fashion, on or about August 22, 2010, the S/V VENTURE dragged and/or broke free from her assigned mooring and struck a moored barge.

39. As a further result of Hyannis Yacht Club's failure to provide a mooring in a workmanlike fashion, the S/V VENTURE sustained extensive damage and diminished value.

40. As a further result of Hyannis Yacht Club's failure to provide a mooring in a workmanlike fashion, the Plaintiffs incurred costs for salvage, repair, and storage of the vessel, and were otherwise harmed.

41. As a further result, National Union Fire Insurance Company of Pittsburgh, PA paid various sums and incurred expenses, to The Savage Family Trust for these damages, pursuant to the insurance policy it had issued.

42. As a further result of the failure to provide a mooring in a workmanlike fashion by the Defendant, Hyannis Yacht Club, the Plaintiffs have been damaged in the sum of \$110,000, plus interest, costs and such other relief as this Court deems fit.

WHEREFORE, the Plaintiffs, The Savage Family Trust and National Union Fire Insurance Company of Pittsburgh, PA, pray that this Honorable Court determine the following:

1. The extent of the damages caused by the negligence, breach of contract, and/or breach of the implied warranty of workmanlike performance by Hyannis Yacht Club and award same to The Savage Family Trust and National Union Fire Insurance Company of Pittsburgh, PA.

2. Such other relief as this Court may determine.

Filed on August 16, 2012

By their attorney,

/s/ Seth S. Holbrook
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